In view of this, one is surprised to find the recent decision in *Herter* v. *Mellen*, 53 N. E. Rep. 700 (N. Y.), favoring the tenant. The defendants were lessees of the plaintiff for one year, rent payable monthly, and gave due notice that they would leave at the expiration of the term. They were compelled, however, to hold over for two weeks owing to the serious illness of their mother, whose life would have been endangered had she been taken from the house. The Court of Appeals held — three judges dissenting — that the failure to surrender possession promptly did not result in a tenancy from year to year under the terms of the prior lease. Purely as a matter of precedent it would seem that the minority had the best of it. However, had the court decided against the defendant it should have held him liable as tenant from month to month rather than as tenant from year to year, since the rent was payable monthly. 13 HARVARD LAW REVIEW, 142. The strict rule is so severe, so hard to justify, that it is scarcely to be regretted that the New York court has departed from precedent. To hold the procrastinating tenant as a mere trespasser is a very different question from forcing him against his will to continue as lessee. Moreover, the new tenancy is founded on a supposed agreement between the parties implied from the fact of holding over. And when the defendant states clearly that he does not wish to continue in possession it is hard to imply such a contract. The principal case, then, is clearly a step in the right direction.

SUICIDE AFTER ASSAULT. — In the case of *People* v. *Lewis*, 57 Pac. Rep. 470 (Cal. Sup. Ct.), one Farrell during an altercation was shot by the defendant so that according to expert medical testimony death must have resulted within an hour. Shortly after the shooting the victim by cutting his throat made a wound sufficient in itself to cause death in much less than an hour. The defendant was convicted of manslaughter, and on appeal the court affirmed the conviction, declaring that the two wounds concurrently contributed to cause death and the defendant was accordingly responsible.

An exactly similar case has so seldom arisen that a clear statement of the law is difficult to find. Much of what is said on the topic by text-writers is based upon the remarks in 1 Hale P. C. 428. But the illustrations there given assume either that the first wound was not itself mortal or that death was hastened by unskilful medical treatment: neither instance is strictly in line with the circumstances of the present case. In *State* v. *Scates*, 5 Jones N. C. 420, however, it was held that where the victim of a mortal wound received subsequent fatal injuries from a second person the first wrongdoer must be acquitted.

The decision of the court in the principal case is not easy to justify. To hold the defendant guilty of murder it is necessary to establish an unbroken causal relation between his act and the death of the victim. Unless his act was partly or wholly the cause he cannot be responsible. If the deceased because of pain or fright had so far lost his self-control as not to be responsible for his act, the defendant ought to be convicted. But in this case it does not appear that such were the facts. Moreover, it is unsatisfactory to say that "but for" the first wound the second would not have been given; yet this is suggested with favorable comment. Again, it is clearly erroneous to regard the defendant's act as the last wrongful act in the series which resulted in death. To say that the two

acts "concurrently contributed" is little more than a recognition of the physical fact that the deceased at the time of his death was bleeding from both wounds. Failure to establish the causal relation, then, necessarily makes the suicide a subsequent independent act for which the doer alone is responsible. The defendant, therefore, should have been held only for the criminal assault.

SUCCESSION TAXES AND THE CONSTITUTION. — What will constitute a direct tax within the meaning of the third section of the United States Constitution after a century of decisions is again disputed. In the case of *High* v. *Coyne*, 93 Fed. Rep. 450 (Cir. Ct., Ill.), on demurrer to a bill to enjoin the imposition of the Succession Tax provided by the War Revenue Act of 1898, it was held that such a tax is not upon property in the ordinary sense, but on the privilege of succession thereto: that it is, therefore, not a direct tax.

The Constitution requires that direct taxes be apportioned to the States according to population. This impractical method has induced a somewhat technical definition of direct taxes. To economists contemporary with the Constitution direct taxation seems to have meant a tax on the capital or revenue of individuals as distinguished from a tax on their expenses. In interpreting the Constitution, however, there was a tendency till 1894 to reduce this definition to capitation and land taxes. *Hylton* v. *United States*, 3 Dall. 171; *Veazie Bank* v. *Fenno*, 8 Wall. 533. And so a succession tax like that in the principal case has been held indirect as falling outside this definition. *Scholey* v. *Rew*, 23 Wall. 331. In the Income Tax cases, however, there appears a more liberal tendency. The definition of direct taxes was extended there by a divided court to include personalty and incomes derived from realty or personalty. *Pollock* v. *Farmers' Loan and Trust Co.*, 157 U. S. 429, 158 U. S. 601. It is possible, therefore, that the Supreme Court will now overrule *Scholey* v. *Rew*, *supra*, and hold this Succession Tax also direct. On the other hand, the distinction of the Circuit Court between the right to succeed to property on the death of the former owner and the right of ownership has been taken so constantly in State courts under various constitutional prohibitions that it has become the generally accepted doctrine. *Minot* v. *Winthrop*, 162 Mass. 113.

As an original question it would seem hardly conclusive to say, with these courts, that a tax on succession is not a tax on a property right but an excise on a privilege conferred by the State, which, throughout the history of the common law, the State has regulated, — which, according to some courts, the State may abolish. Society also grants as a privilege private ownership; and whether deemed rights or privileges, both, under our constitutions, are subject to State regulation differing only in degree. That there has been much greater restriction of succession, is, however, a sensible ground for a distinction, — one which will not conflict with the income tax cases. The common-law doctrine that a rent of land is an incorporeal hereditament, and, therefore, itself in the nature of realty, may logically explain the decision that an income tax is direct. It may well be, however, that the court was largely influenced in that case by the convenience of treating the income from property as property itself, and that this tendency to avoid technical distinction in a matter of commercial importance will lead them to say in this case that the right to succeed to property is itself a property right.